



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: AUGUST 12, 2022

IN THE MATTER OF:

Appeal Board No. 622321

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective December 15, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by 56 LEONARD STREET CONDO prior to December 15, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed March 30, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a residential building condominium as a porter. On December 14, 2021, the employer's resident manager, BS, met with the claimant regarding a security breach that happened on December 10, 2021. An assistant manager, LM, and other employees were also present. During the meeting, the conversation between BS and the claimant was heated. The claimant became frustrated and raised his voice because he felt that BS was picking on him because other employees were involved in similar security breaches. He stated this to BS and added that he was upset. He chuckled in disbelief on occasion, expressed disagreement with the employer's

version of the incident, and said at one point, "What do I f-g do here?" when BS appeared to reject his explanations. At the conclusion of the meeting, the claimant was told to go back to work. The claimant had not been warned about similar conduct in the past.

Later that day, BS told the claimant that he was suspended indefinitely without pay. The employer had made the decision to impose this suspension because of the claimant's conduct during the meeting. The claimant then was escorted out of the building. As he was escorted out, the claimant raised his voice and used vulgar language. After the claimant left the building, the employer subsequently made the decision to terminate the claimant's employment because of the conduct he engaged in as he was escorted out of the building and after exiting the premises. On December 17, 2021, BS notified the claimant of his discharge.

OPINION: The credible evidence establishes that the claimant was suspended indefinitely without pay on December 14, 2021, because the employer was unhappy with his conduct during a meeting about an alleged security breach. Although the employer contends that the decision to discharge the claimant was made after this suspension was imposed, we have long held that an indefinite suspension without pay constitutes a termination of employment for unemployment insurance purposes (see Appeal Board Nos. 607653, 610431).

In light of this, the claimant's conduct after he was notified of this suspension is not controlling, since his separation from employment had already occurred. Instead, we now must determine whether his actions during the meeting on December 14, 2021, rise to the level of misconduct for unemployment insurance purposes.

We find that they were not. Although the claimant raised his voice on occasion during the meeting, chuckled in disbelief, and used a vulgarity that he did not direct at anyone, he did so solely out of frustration because he did not agree with the employer's assessment of the incident under discussion. He also felt that he was being singled out and not being heard. We note that he had not been warned about similar behavior in the past. While insubordinate and disrespectful behavior toward a supervisor may constitute misconduct, the Court has also held that employees need not be servile or docile towards supervisors. (See Appeal Board Nos. 594645 and 591528, citing *Matter of Raven*, 40 AD2d 128) Under the circumstances in this matter, we conclude that the claimant was separated from his employment under non-disqualifying

circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective December 15, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to December 15, 2021 cannot be used toward the establishment of a claim for benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER